

**REMARKS/ARGUMENTS**

The Final Office Action of August 17, 2006 has been carefully reviewed and this paper is the Applicant's response to the Office Action. Reconsideration and allowance of the instant application are respectfully requested. Applicant notes with appreciation the allowance of claims 1-12.

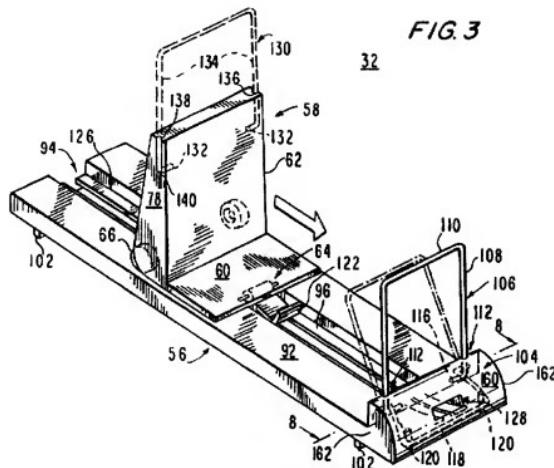
Claims 13-18, 23, 24, 25-30, and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by Merl (6,142,317). Claims 19, 20, 31, 32 and 36-49 were rejected under 35 U.S.C. 103(a) as being unpatentable over Merl in view of Spamer et al (5,634,564). Claims 21, 22, 33, 34 and 40-43 were objected to as being dependent upon a rejected base claim.

By this response, claim 25 has been amended.

**Rejection Under 35 U.S.C. § 102(b)**

Claims 13-18, 23, 24, 25-30, and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by Merl (6,142,317). The Office Action alleges that, like claim 13, Merl teaches "a pusher face that is extendable transversely relative to the track." In fact, Merl is silent on projecting or extending in any direction other than upwards. In contrast, the definition of the term "transverse" is "lying or extending across or in a cross direction", which is different from upward. The limitation of claim 13 that specifies the pusher face extendable transversely relative to the track cannot be considered equivalent to Merl's extension bail that projects in the direction upward from the track, because "upward" is merely perpendicular to the track, not across it. See Fig. 3 below. Furthermore, Merl is silent on accommodating products that would require support across, or transverse of the track.

Merl does not anticipate the claims because independent claims 13 and 25 describe a pusher face that extends in an alternate direction to upwards and thus not every limitation of the claims is disclosed by Merl.



projects upwardly. It would not be obvious, and there is no motivation in Merl or Spamer, to modify a pusher head with a removable bail projecting in an upward direction to achieve a pusher face that itself extends in a transverse, or cross, direction relative to the track. Spamer is directed to a pusher device for dispensing articles, including an urging spring. Spamer does not teach a pusher face extendable in a direction across the track. Consequently, Spamer does not obviate the deficiencies identified above with respect to Merl. As a result, Merl in view of Spamer does not render obvious any pending claims and Applicant respectfully requests withdrawal of the ground for rejection.

**Claim Objections**

Claims 21, 22, 33, 34 and 40-43 stand objected to as being dependent on rejected base claims 13, 25, 36. In response, claim 25 was amended to clarify the plane in which the pusher face extends, which distinguishes claim 25 above the prior art. The use of the term "transversely" in claims 13 and 36, in regards to the direction the pusher face extends, has been described in detail above to point out the distinction between the limitations of claims 13 and 36 and the prior art teachings of Merl and Spamer. Consequently, the base claims to the claims objected to should be allowable and therefore the objection is respectfully requested to be withdrawn.

**CONCLUSION**

It is believed that all claims are in allowable condition. The commissioner is hereby authorized to charge any fee due or credit any overpayment of fee to Deposit Account No. 19-0733.

All rejections and objections having been addressed, Applicant respectfully submits that the application is in condition for allowance and requests prompt notification of the same.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: September 5, 2006

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